

**MINUTES**

**MONTANA SENATE  
56th LEGISLATURE - REGULAR SESSION  
COMMITTEE ON STATE ADMINISTRATION**

**Call to Order:** By **CHAIRMAN MACK COLE**, on March 11, 1999 at 10:00 A.M., in Room 331 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Mack Cole, Chairman (R)  
Sen. Don Hargrove, Vice Chairman (R)  
Sen. Jon Tester (D)  
Sen. Jack Wells (R)

**Members Excused:** Sen. Bill Wilson (D)

**Members Absent:** None.

**Staff Present:** Keri Burkhardt, Committee Secretary  
David Niss, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 578, HJ 10, 2/22/1999; HJ  
7, HJ 10, 2/23/1999  
Executive Action: None

**HEARING ON HB 578**

**Sponsor:** REP. SHIELL ANDERSON, HD 25, LIVINGSTON

**Proponents:** Bruce Barrett  
Mona Jamison, Montana Historical Society  
Foundation  
Matthew Cohn, Administrator of Travel Montana,  
Montana Department of Commerce  
James Fall, Executive Director, Montana Newspaper  
Association  
Angela Fultz, Chief Deputy, Secretary of State

**Tony Herbert, Information Services Division,  
Department of Administration**

**Opponents:** None

**Information:** **Arnold Olsen, Chief of Operations, Department of  
Fish, Wildlife and Parks**

**Opening Statement by Sponsor:**

***{Tape : 1; Side : A; Approx. Time Counter : 6 - 29}***

**REP. SHIELL ANDERSON, HD 25, LIVINGSTON,** said this bill came about through discussions with **Mr. Barrett,** from who you will hear. He wanted to access some film for a documentary he was doing and he needed some eagle footage. He wanted to use some footage from the Fish, Wildlife and Parks, but they wanted a price that was exorbitant. It was public record and it was available, but it was available at a very high price, so we came up with this bill. This bill says the public record includes such things as other non-print media including but not limited to video tapes, photographs, microfilm, and film on computer disk. It also clarifies that a person who is seeking this type of information must pay the actual cost to produce it. Therefore, an agency may not charge more than the amount provided under Subsection 2(a) for providing a copy of an existing non-print record.

Subsection 2(a) says the agency may charge a fee not to exceed that agency's actual cost of purchasing the electronic media used for transferring data, if the person requesting the information does not provide the media. The agency may also charge the hourly rate of the current fiscal year for a state employee classified as a grade 10, who is providing the service and doing a copy of that record. If you want to, take your pencil and write on Line 11, Page 2, "2(a) or 2(d)". That would clarify that you pay for a video cassette and you also pay for the person who is producing the video cassette for you. That may be covered under 2(a) because it says "the agency's actual costs".

On Page 2, Lines 13 and 14, there was some discussion on the quality of reproduction that would be provided to the person requesting it. This says, "an agency shall ensure that a copy of information provided to a requestor is of a quality that reflects the condition of the original, if requested by the requestor". In some cases that would entail some added expense, but if a person requests the quality of the original and is willing to pay for it, then they should be able to get that. Otherwise, you

could request something and get a copy that is of such low quality that it would be of no use to you as the requestor.

There are other amendments that will be proposed to you to address some concerns of the Historical Society that I think are valid. Those have to do with reproducing things that are delicate in nature and might be damaged by the reproduction. There are also some concerns from *Travel Montana*. I believe the amendment you will be presented addresses the concerns of all of those people. I urge that you would put those on.

**Proponents' Testimony:**

**Bruce Barrett** handed out **EXHIBIT(sts55a01)**. I am not the only reason the bill was drafted, but I am one of the reasons. In 1993, I was able to land a nationally published news show. It was a broadcast on ESPN and to my knowledge, it was the first time someone from Montana was making a regularly aired show broadcast on national television. It was a five minute show each week in which we talked about some of the interesting environmental, outdoor, or wildlife things that were happening around America. In one of the shows I wanted to do a piece on the famous bald eagle gathering in a place near Helena each year.

I did what a lot of film makers would do and I contacted the Montana Film Commission and Travel Montana. They were wonderful. They invited me over and even escorted me when I did this, but as nature goes, we were unable to get eagle footage. I asked if there were any other alternatives or if there was other eagle footage we could use. I learned there was some beautiful eagle footage, and this eagle footage is just an example of a bigger problem with the Department of Fish, Wildlife and Parks. Unfortunately, I learned the footage was basically unavailable. It was available, but only if you were willing to pay the price. The price was \$100 an hour for an employee to walk back in the stacks and find the stuff and then \$50 a second for the amount you wanted to use. The policy, when I approached them in 1993, is on the last two pages of this handout that I gave you.

That struck me as outrageous. I am not a film maker for a living. It struck me as wrong because I know there is a general philosophy in Montana that the records of our state are open to the public. If I had been able to air that show, it may have done a lot of good for this state's economy, because ESPN goes into 60 million homes. I visited with the Fish, Wildlife and Parks many times and they were very courteous about it; we just had a philosophical difference about this. I went to a number of divisions, both at the federal state levels, who cooperated fully with me. I ran many such programs from other states, but I could not get it from my own state. Since that time there have been

some changes. Philosophically, they are accepting more that these are public records and the price has been cut in half. Now it is \$25 a second to use their materials, which I still think is outrageous.

This bill basically does three things. First, it makes it clear that footage is public, just like records and pieces of paper are public. As an example, on Page 2 of my handout I showed you what the Supreme Court said in the 70's when someone tried to get some footage and the agency said they were not public records. It says "the whole idea of open records laws is to make them open to the public". Just because an agency decides to keep the records on something besides paper does not mean it is not a record.

The second thing this bill does is make sure agencies cannot overcharge. I think \$50 a running second is overcharging. Charging \$100 an hour for a staff person to walk in and look around to acquire this material would be like taking an employee and paying them \$200,000 a year. That is not what government is all about. It is supposed to be the same as it is with written records; the actual cost. The final thing this bill does is to make sure the agencies cannot side step the law by giving inferior copies. When this bill appeared in front of the House Committee, the Fish, Wildlife and Parks Division appeared as a proponent for the bill, but they had an amendment that totally gutted the bill. This bill requires they give you a good quality copy. If I had wanted to use that eagle shot and put it on the ESPN show, much to the benefit of Montana, I needed a good copy. It cannot be a VHS copy like you show at home. It needs to meet broadcast standards and they have excellent material in that division.

Now they are trying to say it is okay that these are open records and they know they cannot charge too much, but they can give lousy copies to people. They wouldn't say it that way, but that is how I say it. I believe the Fish, Wildlife and Parks feel they are protecting commercial people in the State of Montana. For example, if they have a piece of eagle footage and I get it, what about the person in Montana who would have taken money from me to go out and take a shot of an eagle. I could have bought it from him, so if I can get it from the state of Montana at the actual cost, I am not going to go out and pay the Montana business man. Therefore, they have to charge a lot because that is their way of protecting private enterprise.

I don't buy that argument. If I have a rock and roll band and I want to do a song about the Vietnam war, I can go to the Pentagon and ask for footage of the Vietnam war. I pay, use the open records law, and get that footage. I can take that footage, put it in the rock and roll video and sing about how war is horrible.

I can sell it for money. That is how government works. Another example would be if the Attorney General of Montana does a crime study and they come up with statistics showing there is not much crime in the State of Montana. They put it in a pamphlet and publish it. Perhaps a year later I write a book called, "Move to Beautiful Montana," and I include a chapter called, "There Isn't Very Much Crime Here." I can use those statistics.

I could have hired Stephen Spielberg to simulate a bomb in Vietnam and I could have hired a demographer or some sort of statistician to bring up the material I could have put in my book, but I can currently do the things I talked about. That is what open records are all about. The private demographer or film maker also has access to those materials. Currently, I can go to the Fish, Wildlife and Parks Division if I am rich. If I am National Geographic, I can buy that eagle footage, cost not being an issue, and I can use it on NBC. A small Montana producer, film maker, or person who wants high quality film footage cannot get it. They are prohibited financially. Money should not be the determiner to whether you get access to public records.

I want to direct your attention to Page 3 of my handout. I contacted **SEN. CONRAD BURNS** when this began long ago. I asked him how the Federal Government works, because he has something to do with the media and television. He got this letter for me from the United States Department of the Interior, which is basically the Federal Fish and Wildlife Service. It says their stuff is available. You cannot misrepresent their position or say the United States Government endorses you. There are some reasonable limits, but you can get this. I am urging you to pass this without those amendments. The amendments discussed by **REP. ANDERSON** are fine. Of course they should be able to charge their actual costs. If they use an employee to spend time looking for that material, they should be paid. This material is a resource and is being wasted. They make a few films, show it to a few school rooms and then it sits there.

When the newspaper article ran statewide about the House passing this, I got calls from several people in the private sector. I told them to write letters. I don't know if they have been distributed to you or not, but there are several people in the private sector who wrote that the Fish, Wildlife and Parks are not speaking in their interests when they say they want to protect the private enterprise. Basically, open records are a burden. Just think what it must have been like to be the Secretary of State in Montana the year the open records law passed. They must have thought it was a great burden, but that is part of government. That is part of the philosophy of opening up government over the last 20 years. The Fish, Wildlife and Parks Division has to face that now.

**{Tape : 1; Side : A; Approx. Time Counter : 29 - 44}**

**Mona Jamison, Montana Historical Society Foundation**, stated we are in support of this bill. When we read the bill, I went up to **REP. ANDERSON** and asked him if he wanted to include the Historical Society in this because of the variety of our collections. **REP. ANDERSON** knew more than I did about what could happen in the reproduction of some of these old photographs. He told me to have an amendment drafted to exempt those collections **EXHIBIT(sts55a02)**. Without the amendment, we would endanger the preservation of the original if the requesting party can request a copy equal to the original. To obtain original quality of some of these old Montana photographs and fine art pieces, copies would have to be made from the negatives. Many of the negatives are glass plate negatives. Repeated use wears them down and endangers them from increased handling.

If this is also applied to some of these old collections, it would increase the amount an individual from the public might have to pay for reproduction of a photograph or other image while greatly reducing the amount that large commercial publishers, such as *Time Life*, actually pay for those documents. We have no dispute that these are public documents. People can come and look at them. We want to make sure we preserve the document itself because many of them are very old. We are not asking that everything the Historical Society does should be exempt, just the collections of the Historical Society. We have defined that and referred to a section. I went down to have the amendment drafted with **REP. ANDERSON's** authority after he had talked with **Director Peter Blouke** at the Department of Commerce relating to tourism products. They are here to answer questions. Sharon McCabe, the Acting Director of the Historical Society, is here to answer any questions about the nature of some of these collections and what would happen with them. We appreciate **REP. ANDERSON's** immediate support for the amendment.

**Matthew Cohn, Administrator of Travel Montana, Montana Department of Commerce**, said Travel Montana is in the Travel Promotion and Development Division. We had some discussions with **REP. ANDERSON** about a couple of concerns. The amendment handed out to you earlier addressed those concerns. We are in support of this bill. We have a current policy in place that allows our photographs to be used by non-profit organizations, media sources, and governmental or education services at no charge. We lend out hundreds of photos on a regular basis. We have a skilled photographer on staff who goes around the state at various times taking photos of events. That is why I handed out the Travel Planner **EXHIBIT(sts55a03)**.

I am going to point out a couple of photos we would have some problems with, without the amendment. For instance, Page 10, Page 13, and Page 14, include people who have signed model releases **EXHIBIT(sts55a04)**. These releases tell them how we are going to use that photo. When you are taking a photo of a person who is not in an organized event, you need to get their permission to use it. Our fear was that with unlimited use by anyone these photos, without the permission of the people involved, could be used in a cigarette ad, a real-estate brochure, etc. The amendment and the bill in its current form addresses those concerns. We recommend a Do Pass.

**James Fall, Executive Director, Montana Newspaper Association,** stated public access to public records is nothing more or less than the basic understanding of three words; public, access, and records. The Montana Newspaper Association and its 83 members across the state have long stood for freedom of information that emits from those words, public access to public records. It matters little whether those public records are the traditional printed page that was for so long the only public record, or whether they are now the fully accepted electronic records; that is, the computer disks or what this bill defines as non-print records. Public records and public information, any printed, digitized or film records related to the business of Montana Citizens, should be available to those citizens. There is some discussion among our membership as to the cost that should be imposed for that, but I think the bill as it is being amended and being discussed speaks to that. I urge your consideration and positive action on this bill.

**Angela Fultz, Chief Deputy, Secretary of State,** stated Mike Cooney was not Secretary of State when this law passed. One of the things we have always done, being the records manager, is to provide the public access to records. Our agency has always had that policy and will continue to in the future. We stood as a proponent to this bill in the House and we do again today. We feel that records should be extended into what modern times are doing with records. I would like to point out to you that when the House State Administration took executive action on this bill, as you will see on your third reading copy on Page 1, Lines 21 and 22, these lines were stricken from the bill. I have spoken with **REP. MONICA LINDEEN**, who is the Representative that asked that those two lines be stricken from the bill and made that movement during executive action.

I want to explain to you what this does in particular to our agency. Because our agency is completely fee based, we charge fees for the information we provide that companies or individuals want from us. We do that with our Uniform Commercial Code Lien

system that we provide through a public access system. If you look at this referring line 2-6-103, it allows the Secretary of State to charge services for fees in our office. Section 3 states we may not charge a fee, other than the fees authorized in 2-6-110, for providing electronic information. Our concern with what was done in executive action is that Section (c) would make it so we could no longer charge for our public access system to our UCC system. Currently, we charge 20 dollars a month for banks, our primary customer. They dial into our UCC lien system and get the information they want right at their desk. Our new system we are in the process of developing will be provided through the internet.

We feel this is a service a group wants and is willing to pay for because our fees are low. Spreading that cost so we can continue to provide that information for every person who has to use our agency is probably not the best way to do it. I spoke with **REP. LINDEEN** and she was going to try to be here, but they were doing executive action in House State Administration. She was comfortable handling it one of two different ways; either exempting out the Secretary of State's office for our UCC public access system, as this area of law does for the Department of Revenue, or removing the action she did in State Administration. We are open to whatever the committee would like to do in its wisdo, with that and we will act appropriately from there. Overall, we are a very much a proponent of the bill and the intent of the bill.

**Tony Herbert, Information Services Division, Department of Administration**, stated we also support the premise and the motion behind this bill. I would like to follow on what **Angela Fultz** just described to you. We would like to work with **REP. LINDEEN** and **REP. ANDERSON** on the portion of the bill that was amended. I don't know the full effect of this, but it could potentially affect agencies who provide online computer access to information. Agencies are moving towards having more of their data available through the internet for free through web based technology. We do have circumstances, as Angela Fultz pointed out, where that doesn't work well and we have to incur some expenses. I would like to work with **Angela Fultz, REP. LINDEEN**, and **REP. ANDERSON** to see how we might modify this if we can. Thank you.

**Informational Testimony:**

**Arnold Olsen, Chief of Operations, Department of Fish, Wildlife and Parks**, read **EXHIBIT**(sts55a05).



**Questions from Committee Members and Responses:**

***{Tape : 1; Side : A; Approx. Time Counter : 44 - 53}***

**SEN. HARGROVE** asked what do you do with the extra money? You said you charge more than it costs you; therefore, the money must go somewhere. **Mr. Olsen** replied the dollars we charge go into our program. Even though we charge a cost for doing the research to determine the film and footage, it costs a great deal more for a second of film than it takes to actually reproduce it, as was indicated by the gentleman who talked about how he went out a couple of times and couldn't get the footage. There are a lot of expenses associated with that. Wildlife footage is a lot different than footage of scenery or people. You have to expend a lot of energy and effort to get that one or two seconds.

**SEN. HARGROVE** said so you decided to try to recoup back whatever effort it takes for your people to go up in the mountains and film. Therefore, this is a nonprofit procedure and you have a zero balance when you get finished. Is this correct? **Mr. Olsen** explained it probably does not cover all those expenses and I will admit it is somewhat of an arbitrary number. We did reduce it, as was indicated, by cutting in half of what it was before. We have had responses from small companies who provide footage of certain types of animals. They have indicated that if someone can get the footage for free from us, there is no reason to go to that company and use their service. We are trying to be responsive to that as well. There is probably no way we get compensated for what it takes to actually get that footage.

**SEN. HARGROVE** asked if we were to change the amendment on Line 21, would that cause problems with you, the House Committee, or the House. **REP. LINDEEN** replied no, it would not. I leave it up to the wisdom of this committee to decide what is best. The results of putting in that amendment were not the intent.

**SEN. TESTER** asked over the last year, how many personal requests have you filled for commercial users? **Mr. Olsen** stated on average, we get four to five requests a week for some type of footage or video. There are two or three different responses we get. Some people do not like the fee at all; therefore, they do not respond. In some cases, they just want to see what we have and then decide it isn't what they want. There is a certain amount of expense associated with that. About ten percent of all the requests actually result in people purchasing the footage and moving it forward. **SEN. TESTER** asked is it about two a month? **Mr. Olsen** said there are about four or five a week, but our indication is that if it is provided under this bill, we would likely have to provide responses to all of those. As it is we

respond to about ten percent, so if we had to respond to all of them it would increase our workload by 90 percent in that area.

**SEN. TESTER** said according to the fee schedule, you charge \$100 an hour for a search/dub fee. Is that accurate? **Mr. Olsen** replied that is an old fee schedule. It has been revised and I don't have a copy of the updated fee schedule, but it is cut in half now. It is \$50 for a search/dub fee and \$25 per second.

**SEN. TESTER** asked if someone comes in and wants to know what you have in your file and doesn't end up with actually receiving some film, do you charge them \$50 an hour for the search fee? **Mr. Olsen** stated no.

**SEN. TESTER** said on the amendment **Mona Jamison** handed out, the second part of the amendment says "the materials used solely to promote tourism in Montana". That is a pretty broad area when you are just looking to delete model photos. I heard you and **Mr. Olsen** say it was the pictures with people in them that you were concerned about. I can understand that, but isn't your base of material much broader than that? **Mr. Cohn** stated yes, you are correct. In my testimony I focused on the model, but we do take a lot of scenery shots. Our concern is, unlike the example given with the film, there seem to be numerous photographers who make their living taking scenery shots. We would be giving ours out and that would put us in direct competition where normally people charge \$100 to \$300 for shots like that.

**SEN. COLE** said you have heard the questions here pertaining to what **Matthew Cohn** was talking about. When you get a picture with someone's face in it from the Historical Society, do you identify where it came from? How do you handle that? **Mr. Fall** stated I can speak on how the newspapers would handle it, but I cannot speak directly on how television might handle it. The newspaper would attribute for instance, an identified Senator, rather than an unidentified Senator in a photo, and the source of the photograph should be attributed also. Attribution does not always entail remunerations however. **SEN. COLE** asked therefore you do identify where it came from? **Mr. Fall** replied yes, to the best of our ability. If it is newspaper staff, we certainly identify the photographer who took the picture.

*{Tape : 1; Side : B; Approx. Time Counter : 53 - 67}*

**SEN. COLE** asked is there something that can be done to remedy the concerns you have, if a picture in your book was used by another source. **Mr. Cohn** replied I suppose we would have to change the nature of our current model release. When we take a photo of someone, we have them sign a release where we specifically say how this may be used. We would have to change that and it may

limit some of our options, but there would be a way to handle it. It would impact our options and the availability of taking photos. **SEN. COLE** asked is there something that could be said in the model release if it was used for something other than what you have here. **Mr. Cohn** said we thought of many different scenarios and we don't know what liability may come back to us. We felt the amendment allowed us to meet the intent of the Public Record Law. We do not have a problem with that. We give out hundreds of photographs over the course of a year, but we were concerned specifically about that and more generally into **SEN. TESTER's** question.

**SEN. HARGROVE** asked in terms of liability of a candid photograph, is there any potential for liability for noncommercial purposes? **REP. ANDERSON** stated I wouldn't think so, but it would depend on the circumstances surrounding the photograph, if it was a paid model and if there were any agreements between the model and the agency.

**Closing by Sponsor:**

**REP. ANDERSON** stated I think you get an appreciation for the difficulty we had in crafting something that allowed for public access, while not infringing on private rights, contract, and otherwise. There are probably some overlapping analogies you can make with what Travel Montana has and what Fish, Wildlife and Parks has in their documents. I don't think opening it up and charging the cost of reproduction is going to put the public sector in competition with the private sector. I don't understand why they took 50 percent of the Fish, Wildlife and Parks' fee schedule. It seem like you limit the access to that material to those who can afford to pay for it.

It may not be a perfect bill, but there is a lot of print media people access and use for commercial purposes. I tried to go with a commercial test on this, but I don't think that really works. You might make some distinction between the films and the photographs that were taken versus those purchased from a private sector. I would imagine those that were purchased from an individual in the private sector have some contractual limitations on how they can be used. If the committee thinks there are some ways to make this work a little better, I would be happy to work with you. It was not my intent to cause problems with any of the agencies or people with this. My intent was to further the public good. The public good can perhaps be served by allowing the access where it has traditionally been difficult to get because of the cost.

You might ask Fish, Wildlife and Parks what their budget is in their film office. They obviously do not have the contracts in place to sell this stuff before they go out and get footage, so they are getting paid through some means to have their men in the field getting this footage. I would urge you to put on the amendments to protect the Historical Society. As it pertains to Travel Montana, it may be imperfect but it is my understanding from **Mr. Cohn** they are cooperating with people who want photographs.

#### HEARING ON HJ 10

**Sponsor:** REP. AUBYN CURTISS, HD 81, FORTINE

**Proponents:** Arla Jean Murray  
Joe Beardsley

**Opponents:** None

#### Opening Statement by Sponsor:

REP. AUBYN CURTISS, HD 81, FORTINE, passed out **EXHIBIT(sts55a06)**, **EXHIBIT(sts55a07)**, **EXHIBIT(sts55a08)**, **EXHIBIT(sts55a09)**, **EXHIBIT(sts55a10)**, **EXHIBIT(sts55a11)**, and **EXHIBIT(sts55a12)**.

Until a few short years ago, only world movers and shakers in the global environmental movement preoccupied themselves in matters pertaining to bio-diversity. Since 1992, the term has come to the attention of the general public and to the alarm of many. At that time, President George Bush refused to sign onto the Bio-diversity Treaty and later the effort to gain ratification by the U.S. Senate failed. Only two days before that three men were able to obtain documentation from Brussels, Belgium, which exposed elements of the treaty that revealed the danger it posed to our state and national sovereignty. However, since that time the Department of the Interior Land Management, USDA Forest Service, and other regulatory agencies have pushed to adopt and implement policies set forth by the Man and the Biosphere program. Almost all of them relate to public land management.

Pressure is surfacing, however, to manage private property as well for species, habitat, or resource restoration. The United Nations Educational, Scientific, and Cultural Organization (UNESCO) created the international Man and the Biosphere program (MAB). MAB created the policies to govern biosphere reserves. MAB has subsidiaries in most nations of the world. The U.S. subsidiary is called the U.S. Man and the Biosphere Program. The program is run by the State Department in coordination with almost every other executive agency in the administration. The

U.S. Man and the Biosphere partners are listed on the strategic plan for U.S. biosphere reserves document. The U.N. does not directly control U.S. biosphere reserves and neither does the U.N. own the land. The United States State Department of U.S. Man and the Biosphere takes the MAB regulation and applies them to the U.S. biospheres.

That explains why UNESCO has invited by the State Department to evaluate Yellowstone Park, which resulted in the recommendation that between 12 and 18 million acres be set aside as a buffer zone to protect the park. Thus, the U.N. exercises control over the biospheres through regulations from the executive branch of our own government. Because these regulations come through the executive branch and are applied directly to biosphere reserves, which may also include private land, Congress is left out of the process altogether. Congressman Don Young's American Sovereignty Act, signed by 174 cosponsors and passed by the 105th Congress, is intended to return the separation of powers to allow the balanced system. That is included in **HJ 7**. This problem would only get worse if the U.S. Senate were to ratify the U.N. Bio-diversity Treaty.

Even though this treaty has never been ratified, certain principles are put into effect through the U.S. Man and the Biosphere Program. Persons monitoring rapidly changing federal public land policies and implementation of the elements of the Gender 21 and the Wild Lands Project recognize these regulatory actions and goals reflect the drastic philosophical shift from the concept of multiple use of our public lands to that of ecosystem management. We are all concerned about conserving resources and protecting our environment, but common sense dictates not enough money exists to restore our lands to pre-Columbus conditions and common sense recognizes resources are resources only if they are beneficial to the majority of the public. In Montana, where the stability of our economy depends upon our abundant resources, above and below the ground, we simply cannot afford to acquiesce to a one-size-fits-all climate, described by some global entities who view our state as reserved for their pleasure.

Yellowstone and Glacier parks have been designated biosphere reserves as well as World Heritage sites. They join 45 other biosphere reserves and 19 other World Heritage sites in the United States, including Independence Hall and the Statue of Liberty. The issue of buffer zones has already surfaced and if anyone doubts the pending agenda, you have only to cruise the web, read the assessment on bio-diversity or just read the June 1993 issue of *Science Magazine*. Please help Montana serve notice we have a moral and Constitutional right to have a voice in deciding against the matter. I apologize for the length of the

introduction. There is a lot of material going around. I would point out to you this huge workbook on global environmentalism. The bio-diversity assessment is included in here, as well as some of the other U.N. programs that have come out in various conventions. I also have a list of the treaties.

**Proponents' Testimony:**

***{Tape : 1; Side : B; Approx. Time Counter : 67 - 87}***

**Arla Jean Murray** said I stand in support of **HJ 7**. I have also been asked to add the Stockgrower's name in support of this. We believe in the sovereignty of this nation.

**Joe Beardsley** stated I am from Three Forks, Montana. I am a sovereign citizen of the sovereign state of Montana, which is one of the several states of the sovereign nation of the United States of America. I wasn't aware of **HJ 10**, so I decided while sitting here that I would try to combine the remarks, first for **HJ 10** and later for **HJ 7**. Two hundred and twenty-three years ago our fathers brought forth on this continent a new nation, conceived in liberty and dedicated to the proposition that all men are created equal. That might sound familiar to some of us. That document created not a democracy, but a Constitutional republic founded on a written document. I think it was the first time in history it had ever been done and was probably the most outstanding document in political wars of the world, not to mention that document still stands unique. It set up a government empowered, not by the state, not by the elite, not by the aristocracy, not even by a bureaucracy, but by the people. It established separate branches of government. It established balance of power between those branches of government. It established a rule of law, not a rule of men.

I would ask you one question today. Have you ever read the U.N. Charter? It is a task worth undertaking, especially in concert with the reading of the United States Constitution. The Constitution is very clear in what it sets out as a form of government. I maintain the U.N. Charter contains considerable attacks on the sovereignty of sovereign states. It contains numerous ambiguities and it allows interpretation of its contents based on different ideas, individuals, and groups at different times.

I maintain we are in a war over sovereignty. The U.N., its policies and conventions are an attack on the sovereignty of this country, this state, and the individuals within this state. In the hearing of **HJ 7** I will address the Yellowstone Park Mine in specific detail and hope to apply some of those comments to this

resolution. This is about sovereignty. We need to protect sovereignty and the place we need to start doing it is within the states themselves. This committee has an opportunity to send a message that we are going to protect the sovereignty of the people of this state. I urge you to pass this bill.

**Questions from Committee Members and Responses:**

**SEN. TESTER** asked I do not know what the biosphere program says and what its intent is. Could you enlighten me on that? **REP. CURTISS** explained it is conservation. The goals, like many other programs, are really good. The problems lie in the details. The United Nations had several conventions and the 1993 convention in Rio de Janeiro is the one that paved the way for the biosphere reserves. We have the World Heritage sites. The World Heritage Treaty was ratified by the U.S. Senate in 1972. You have a handout that indicates where the World Heritage sites and biosphere reserves are located. In 1972, about 126 of the hardcore environmental groups were given standing in the United Nations on a consultant basis and the bio-diversity is the result of their efforts in trying to preserve. We are seeing a major philosophical shift relative to the management of public lands. It is from the multiple use concept we have relied upon for so long to one of so-called "ecosystem management". We see that in everything. We studied the Columbia Basin Treaty for about eight months and we see a lot of elements in that Columbia River Basin in its environmental impact statement. They think we need to have corridors linking all of these World Heritage sites and the biosphere reserves.

**SEN. TESTER** stated I have a map here that says, "of little or no use to humans," and this encompasses towns like Great Falls and Havre. I don't know about the biosphere program or what is going on there, but it seems to me they are going to have to relocate all those people. I am for biological diversity, but by the same token, it looks to me like you are indicating they are going to be moving people out of these towns. **REP. CURTISS** said I think if you look into this you will see how it all fits together. The purpose of these resolutions is as much to educate people on what is going on as it is to get a bill passed.

**SEN. TESTER** left to present a bill in another committee.

**SEN. HARGROVE** asked does the U.S. participate in UNESCO currently? Do we pay our bill? I know we didn't for many years.

**REP. CURTISS** replied we are contributing toward this and I passed out a handout from Concerned Women of America. According to that

figure, they have contributed over 5 million dollars this year from taxpayer dollars. A lot more is going for various organizations. I have statistics as well.

**SEN. HARGROVE** said there is a lot of subjectivity in this and I would like to know your philosophy on what we do. In legislation everything we do has to be exactly right or you will be in the courts. This seems a little subjective when it says the "United Nations promoted the biosphere program throughout the world". The following terms found in this resolution are pretty much prohibited in legislation; "threatens to place millions of acres of land under control", "it is designed to continually expand", "biospheres are expected to be", "no land owner within reach or potential reach has input", "would ultimately lead to the reality that Montanans could not use their private land", and the "virtual seeding of these lands". Resolutions may be a little bit different, but I don't think any of us could prove this stuff. Would you comment on that? **REP. CURTISS** stated I think the conclusions are drawn from what is going on in some of the other states. The Common Wealth of Kentucky has passed a resolution after which this one is patterned. This stuff is not making headlines. It is done without Congressional approval. The major program for a biosphere reserve or a World Heritage sight requires that the site itself is a core area and a core value that needs to be protected, not only on behalf of the United States but on behalf of the world. The organizations who have done this bio-diversity assessment insist that to protect a core zone, there has to be what is called buffer zones. Some of the organizations in our country, in connection with the U.S. State Department, invited UNESCO to come to a conference in Billings regarding Yellowstone Park, because they thought Yellowstone was endangered. UNESCO came and decided they needed between 12 to 18 million acres in a buffer zone to protect Yellowstone. About half of that is private land. When you ask about the conclusions in here, this is what they are after. Many people fear if this bio-diversity treaty is ratified by the U.S. Senate, it will be a done deal. So far, it is coming through the executive level and through the administrative agencies.

**SEN. HARGROVE** asked does UNESCO own any land? **REP. CURTISS** replied, no, not to my knowledge. However, if you read the treaty you will see that because we have these designations in our country, we have an obligation not to opt out of any of the provisions that are set forth in the bio-diversity assessments.

**SEN. WELLS** said this map of Montana is obviously very scary. Is this a combination of different maps and documents all put together in one? **Mr. Beardsley** replied as far as I understand, this was put together by the environmental perspectives group in



Maryland who took these documents, analyzed the import of what these documents say and used these to draw this map comprised basically of the core areas, corridors around the core areas, and buffer zones that connect the core areas. I don't specifically know the techniques they used to develop these maps and the areas that are outlined on them. If you would like, I could provide you with a way to contact these environmental perspectives. I know he has a considerable amount of information and would be more than glad to tell you every detail you want of exactly how he developed any of these maps.

**SEN. WELLS** asked do you know how much impact the UNESCO and their presence have on the Crown Butte Mine decisions and settlement?

**Mr. Beardsley** explained, I intended to address that in some detail in my remarks to **HJ 7**. **SEN. WELLS** said that will be fine.

**Closing by Sponsor:**

**REP. CURTISS** stated Alaska and the Common Wealth of Kentucky have passed resolutions in opposition to the biosphere reserves and against U.S. Senatorial ratification of the Bio-diversity Treaty. I mentioned the three gentlemen who were able to stop the ratification in the Senate of that treaty. It was Tom O'Donnell, who heads the National Sheep Growers Association, Dr. Kaufmann, and Dr. Henry Lamb. Dr. Kaufmann lectures all over the United States. I met these people and came in contact with this issue as a result of participation in the Western States Coalition, which is a group of primarily western states, because this is where the impact of these policies are being felt. Those are the gentlemen who got the information from Brussels, Belgium. The Crown Butte Mine fiasco can be directly attributed to UNESCO's efforts to create the buffer zone. Arizona, Arkansas, Florida, Minnesota, New Mexico, Oregon, South Carolina, Tennessee, Virginia, Washington, and Wyoming are moving to protect their states and our national sovereignty. Montana should do the same.

***{Tape : 2; Side : A; Approx. Time Counter : 87 - 110}***

**HEARING ON HJ 7**

**Sponsor:**           **REP. AUBYN CURTISS, HD 81, FORTINE**

**Proponents:**       **Joe Beardsley**

**Opponents:**       None

**Opening Statement by Sponsor:**

**REP. AUBYN CURTISS, HD 81, FORTINE**, stated in reaction to what

has been referred to in **HJ 10, Congressman Don Young** from Alaska has made three efforts to pass legislation which will guarantee the U.S. Congress makes public land use decision and that it is done through the legislative process, not through the executive process. We are asking to support that effort. Initially **Congressman Young** and 66 co-sponsors reintroduced that and the last time there were 164 Congressional sponsors on that bill. It did pass in the Congress, but it is still languishing in the U.S. Senate.

**Proponents' Testimony:**

**Joe Beardsley**, said I have two important documents and if anyone on the committee would like to look at them, I will provide those to you. The first is the World Heritage convention itself. The second one is a paper taken from the United Nations web site in which they are touting Yellowstone National Park and the shutting down of that mine as a victory. The Heritage Convention states, in Article 4, "each state party to this convention recognizes the duty of ensuring the identification, protection, confirmation, and so on, belong primarily to that state".

Farther down, in another article, they say "each signatory state is responsible for the protection, to set up an appropriate staff that possesses the means to discharge their functions, protection being a function, to work out such operating methods as will make the state capable of counteracting the dangers that threaten cultural or natural heritage, to take appropriate legal actions and measures necessary to identify and protect". In Article 6, which is typical of United Nations rhetoric, they say, "while fully respecting the sovereignty of the states, without prejudice to property rights provided by national legislation".

This directly contradicts what you read in Article 4 and 5 that says, if you sign this convention, you are duty bound by that signature to do what they say needs to be done. It is not only your duty to do what they say, but to identify those endangered heritages and to invite us in to make an assessment. While they disclaim the impact on national sovereignty, they impact national sovereignty by saying you impact your own sovereignty when you sign this convention by proclaiming you are now duty bound to do what we say you have to do. This is what I got from the U.N. web site and it is the text of the World Heritage Convention was signed in 1972.

If you look at the U.N. web site, you will find some of their successes and Yellowstone National Park is listed there. In **REP. CURTISS's** designation in the bill, under the whereas, she very kindly says they intervened in that mine. I say they interfered

and derailed it. An environmental impact statement was underway, determining what the impact of that mine was going to be. Everything in the paper leading up to this study of this mine and the eventual interference by the U.N., was that the environmental impact statement was on target and it looked like it was going to favor the mine going into production. The United Nation's own document says "in the 1990's it became obvious a number of problems were besetting Yellowstone and when the time came", and what does that mean? It means that several environmental groups and the Park administration, and I believe the head of the Department of the Interior, although his name was not used in conjunction with this, decided that the environmental impact statement was going to approve the mine, so they invited UNESCO in to do an assessment. "When the time came" means when the environmental statement was on track and looking favorable for the mine. It may be a prejudicial statement, but that is the way I feel about it and what I determined from the newspaper articles widely published in the Bozeman Chronicle. A comment in their document may be a fore runner for things to come.

They are saying that, also in conjunction with the mine, the park is endangered through problems with the buffalo herd. They have a quote from a conservationist in their document that says, "there has never been a documented case of transmission of brucellosis from bison to cattle anywhere in the world". They are on record they have already formed an opinion about the bison/cattle problem. If they come in, are they going to preclude the State of Montana from handling its own bison problem as they precluded a mine from operating inside the sovereign borders of the State of Montana? I leave that open to your judgement.

Farther down, they talk about all these problems in Yellowstone and they say, "above all an ambitious gold, silver, and copper mining project, located some 4 kilometers from the Park's northeast boundary, is already under consideration in 1990. Authorities were concerned mining would pollute rivers flowing into Yellowstone". The person who wrote this either did not know what he was talking about or he fabricated and lied directly. In either case, that is not acceptable as far as the State of Montana is concerned. If he was wrong and did not know his facts he should have checked it out.

They go on to say that "the World Heritage Committee registered alarm at this situation", which they did, "but handling it turned out to be a delicate matter". Of course it did, but why? Because the Committee's concern was even criticized by some members from Congress as a United Nations infringement of the United States sovereignty and that is what we are talking about today. They go on, "the truth is, of course, that there can never be any

question of infringement, since the World Heritage Committee has no power to oblige any country to follow its recommendations". We saw, from reading back here in the Heritage Convention itself, they have a power of holding you to the fact that you signed the document and duty bound yourself to do what they say you have to do to protect the site.

In the middle of this paragraph it says, "as it turns out, however, most people are sensitive to international scrutiny, not entirely at ease with the idea that their conduct might identify them as cultural or environmental slob". When I was a young man I worked underground, both in Montana and in Utah, and there was not a day I put in that I didn't feel I had put in a honest day's work. These people think someone who is for that kind of a thing and who is for an environmental impact statement should be labeled as a "slob". That is one of the most arrogant statements I have ever heard in regard to the question of mining, logging, farming, and ranching, which is all an issue with these people.

They further say, "in the United States many states' rights advocates strenuously oppose any encroachment on the part of the Federal Government, and some with wilder fantasies see the United Nations as an even more ominous form of central power". If you question the growing and budding central power of the United Nations, according to the people with the United Nations themselves, you are a harbinger of "wilder fantasies". These are the documents I will provide you if you are interested. The United Nations has shown their colors in their own documents, in their own words. I feel the Federal Government is not going to take the steps needed to curtail its own power, let alone that of the United Nations, but the State of Montana and several states of this sovereign nation can do it. This committee can help send a message to the United Nations that they cannot do this in the sovereign borders of Montana again.

#### **Questions from Committee Members and Responses:**

**SEN. WELLS** said we are all aware of the President's move in designating the National Monument in Utah. Have they done anything to express their dissatisfaction with the President's actions? **REP. CURTISS** answered they are engaged in heavy litigation right now. The people in charge of the school trust funds sued and the Western States Legal Foundation have entered into that action. I don't know what entity is representing Utah State Government, but I am sure there is one and I can find that out for you.

**SEN. HARGROVE** asked is there a similar objective and a similar map extending into Canada and Mexico? **REP. CURTISS** replied yes,

and there is another treaty coming up also called the Desert Vacation Treaty. That has not been submitted to the U.S. Senate yet. We have a county commissioner who spends time in the southwest vacationing and she has seen the BLM maps. They, "meaning the movers and shakers," believe about 50 percent of this continent is declared to support human habitation. There many different things that have about from what we are talking about; the sustainability concept, the ecosystem management concept, and the restoration of resources concept. **SEN. HARGROVE** stated apparently it covers just about everything and can I assume that it covers the whole world too? **REP. CURTISS** said I believe that. I would like to point out that this information is on the web site. You can access the Man and the Biosphere. **Secretary Glickman** has commissioned what he calls "a committee of scientists" to address public lands management. They were invited to Missoula, Montana a year ago. When I received notification it mentioned the Greater Yellowstone Coalition was going to be involved in that. I called the Governor's office and the Governor's office was unaware of that meeting. When the agenda came out, it changed the Greater Yellowstone Coalition to Yellowstone Ecosystem and was being represented at that meeting.

The Yellowstone Coalition is the same group instrumental in inviting UNESCO to come to Yellowstone Park. The State of Montana was not involved in that. There are 13 environmental groups that constitute that coalition. The result is the loss of the proposed New World Mine Cost. It is 200 hundred high paying jobs, business opportunities for companies that supply and service the mine, 8 million in tax revenues to Park County, 40 million in tax revenues to this state, and wasted several millions of dollars and several years of time spent to acquire the scientific data and interpretations hoping to develop the mine. That was done in environmental impact statements. Historically, more than 4 million dollars of gold, copper, silver and lead were produced in that Cook City mining district.

**Closing by Sponsor:**

**REP. CURTISS** stated the mining people rose in support of this in the House and I expected some of those people to be here today, but I could give their testimony to the committee. I have a list of co-sponsors, **EXHIBIT(sts55a13)**, of **Congressman Young's** bill. This bill has been defined by some to be the single most important land management issue now before the U.S. Congress. The act is needed to project and help safeguard the sovereignty of our country. This act is also needed to reduce the opportunity for foreign governments and foreign companies to dictate and adversely impact the policies and economy of the United States. It is crucial that the U.S. Congress, and only

Congress, be allowed to offer any areas, land, or water of the United States or any of its territories as part of an international designation that could or may in any way effect the use of management of that area.

I would like to emphasize that Glacier National Park is a biosphere reserve and World Heritage Sight. There is another one listed on the maps as Coram. When you look at the possibility of buffer zones, etc., Canada has already designated a huge area that shapes up with this Y2Y corridor and is part of the Rocky Mountain Ecosystem proposal. It is a corridor linking Yellowstone and Glacier National Parks. These have been used in the past and are now being used by special interest groups to harass and stop projects. One of these resolutions asks that the U.S. Senate does not ratify the bio-diversity treaty and the other calls for support for **Congressman Young's** bill on American Land Sovereignty. Thank you.

**SEN. WELLS** volunteered to carry both resolutions if they should pass.

*{Tape : 2; Side : A; Approx. Time Counter : 110 - 128}*

#### DISCUSSION ON HB 620

**Greg Petesch, Legislative Staff**, said I think what **SEN. TESTER** wanted discussed was to what extent **HB 620** changes the current status quo.

**SEN. HARGROVE** stated **SEN. TESTER** left a note that asks if you see anything in this bill that is not covered in current statutes?

**Mr. Petesch** replied this is about current statutes and current law. By the term law, I mean including the court interpretations of statutes, which are a little different and to some extent codifies some decisional law. The most recent case on this topic is the Great Falls Tribune Company vs. Day. That dealt with the RFP and bid process for the private prison. The statute on public bid allowed any governmental entity to keep proposals from public disclosure until after the bid was awarded. The Great Falls Tribune Company sued to overturn that. The Montana Supreme Court said yes, if it is going to be public information anyway, you cannot restrict time of disclosure. That is essentially the same decision we got on draft bills. If we are going to let them be public documents at some point, you cannot control the timing of the release of that information, even if there is an arguably laudable purpose.

In this case, the state argued it was designed to allow the state to get the best possible financial return. To some extent this bill, which obviously changes current statute by codifying portions of that decision which is for Constitutionally protected material, you do not have to disclose it. That Constitutionally protected material could be things like medical information the state may have about an individual. The other thing this bill does, and it is talked about in the Day case but is not specifically addressed, is that jails and public facilities prevent the release to the public those types of things. I think this is where **SEN. TESTER** was most concerned.

In the Day case, the state talks about not releasing those kinds of things and the court does not specifically address it. The state told them they were going to withhold it and the court does not say whether it is proper or not. The concern is that under Article 2, Section 9, the right to examine documents, the only exception in the Constitution itself is for cases involving individual privacy. The court has interpreted individual privacy to apply to trade secrets. That provision is codified in this bill also. We do not have a specific decision now on whether a blueprint or a facility can be construed to be a trade secret. Facilities have withheld that information because if it is public anyone, including inmates, can get it. It obviously makes escapes easier if you have the blueprints, but there is no Constitutional provision for public safety as an exception to the right to examine public documents. This bill does change statute to provide for that. The cases talked about it, but they didn't specifically address it. That is, in my opinion, what the bill does to change the existing law.

**SEN. HARGROVE** said, I would like to ask another question on behalf of **SEN. TESTER**. Can inmates get blueprints? **Mr. Petesch** replied currently they are not being allowed to, by policy to protect public health, safety, and welfare. That may be a compelling state interest to protect public, health, safety, and welfare, under Article 2, Section 10. I would say that since inmates have reduced rights while they are confined, certainly they should not be allowed to have them while they are an inmate. The challenge will come if a member of an inmate's family asks for them. We would have to see how that was resolved.

**SEN. HARGROVE** asked did they in this case? **Mr. Petesch** answered I believe that someone made a request for blueprints and it was denied. **SEN. HARGROVE** asked did the people who escaped have the blueprints? **Mr. Petesch** stated I don't know that they did. My reading of **Sheriff Strandall's** comments in the paper was that they had never released those to anyone. The private prison, as part of the RFP process, specifically told the court they were

not going to give those out. That issue was not addressed in the holding, although it was discussed in the case.

**SEN. HARGROVE** asked if an inmate wants a document, do you know what the process is for getting it? **Mr. Petesch** replied they usually ask the prison or county jail personnel for documents. They have access to legal materials and they often write and ask for things. **SEN. HARGROVE** said there are a lot of things they do not let them get. **Mr. Petesch** stated because inmates have reduced rights you can restrict their rights, but whether you can restrict everyone is a separate issue.

#### HEARING ON HJ 31

**Sponsor:** REP. WILLIAM MENAHAN, HD 57, ANACONDA

**Proponents:** Dan Whyte, Chief Legal Council, Secretary of State

**Opponents:** None

**Information:** Jeff Brandt, Information Services Division,  
Department of Administration

#### Opening Statement by Sponsor:

**REP. WILLIAM MENAHAN, HD 57, ANACONDA,** stated I introduced a bill and the House State Administration Committee thought if we got together with the Department of Administration, we could establish a better phone system for the people of the state and also provide some training. I am trying to get away from people calling and never getting to talk to a person. It isn't too bad to get voice mail, but there are a number of those that go through a whole menu of things while you are paying for the call. At the end there is no one to talk to. That is why we brought this bill forward. We are going to try to work out a system that is friendly to them and friendly to the people who are calling State Government. They are working on the amount of time the menu goes on as well as a number of other issues. We made this into a friendly resolution to solve this problem.

#### Proponents' Testimony:

**Dan Whyte, Chief Legal Council, Secretary of State,** said we are here in support of this joint resolution. **Mike Cooney, Secretary**



**of State**, wanted to make it clear that he supported **HB 144**, which was the bill introduced by **REP. MENAHAN** addressing the issue of voice menu answering systems. **Secretary Cooney** is against voice answering systems in general because he wants his customers to talk to an individual. We do not have it in our office. It is his intention to keep the office that way. There is always someone to talk to. We have a receptionist and people answering phones for questions. We are fully in favor of this joint resolution.

**Informational Testimony:**

**Jeff Brandt, Information Services Division, Department of Administration**, stated I compared the content of the joint resolution with some work we have already started, as a result of working with **REP. MENAHAN**. In every situation we intend to move forward on a policy basis in line with the resolution. We are already well underway to getting this taken care of in policy. There are a number of agencies that are particularly concerned with the use of menus, because they feel it is a way they can actually provide better service. **REP. MENAHAN's** concern about this was our wake-up call to take a look at some of the messages, how long they were, and the difficulty citizens have sometimes in actually gaining access to the person they need to talk to when they need to talk to a person. With the plan we have in place, and with the review process, we will definitely take care of the concerns addressed in this resolution.

**Questions from Committee Members and Responses:**

**SEN. COLE** asked you mentioned **HB 143**. Where is that standing? **REP. MENAHAN** replied the Committee tabled that one and brought up this resolution. We decided to have a resolution rather than put it into statute. **SEN. COLE** said this is essentially a substitute for that bill. **REP. MENAHAN** said during the interim by the Legislative Council Services Division, I talked to **Bob Peircen**. We thought they could make a report to Legislative Services Division to see that we have made some headway in solving some of these problems. **SEN. COLE** asked will they report to the Legislative Services Division? **REP. MENAHAN** said, no they will just report to us, as a body. It is just courtesy so we will know what steps are being taken as we go along. In one of the areas, people would call the Department of Commerce with a number of licensing agencies and were unable to talk with a person, which made it difficult for them in their re-licensing. We are trying to work with them and make the system a little more efficient.

**{Tape : 2; Side : B; Approx. Time Counter : 128-132}**

Closing by Sponsor:

REP. MENAHAN stated, I close.

Dan Whyte, Chief Legal Council, Secretary of State, submitted information and amendments to HB 578, **EXHIBIT**(sts55a14) and **EXHIBIT**(sts55a15) .

ADJOURNMENT

Adjournment: 12:13 P.M.

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SEN. MACK COLE, Chairman

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KERI BURKHARDT, Secretary

MC/KB

**EXHIBIT**(sts55aad)